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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,899	11/23/2001	Gregory M. McGregor	AZOTH-1	3388

7590 09/02/2005
John T. Whelan
3375 Bayside Road
Huntingtown, MD 20639

EXAMINER

LESNIEWSKI, VICTOR D

ART UNIT	PAPER NUMBER
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2152

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

16

Office Action Summary

Application No.

09/991,899

Applicant(s)

MCGREGOR ET AL.

Examiner

Victor Lesniewski

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The amendment filed 6/24/2005 has been placed of record in the file.
2. Claim 1 has been canceled.
3. Claims 2-19 have been added.
4. Claims 2-19 are now pending.
5. The applicant's arguments with respect to the claims have been considered but are moot in view of the following new grounds of rejection.

Response to Amendment

6. All pending claims have been newly added. These new claims provide a change in scope as the applicant has further defined the invention.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 2, 10, 11, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Gifford (U.S. Patent Number 6,052,718).

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9. Some claims will be discussed together. Those claims which are essentially the same except that they set forth the claimed invention as an apparatus are rejected under the same rationale applied to the described claim.

10. Gifford has disclosed:

- <Claims 2 and 11>

A method of dynamic content translation and switching comprising the steps of: generating a request at a client location for internet data, said request defining a first route by which said request is to be fulfilled (column 7, lines 53-59); accepting and processing the request (column 7, lines 60-65); breaking the first route (column 7, line 66 through column 8, line 52); determining, in accordance with at least one rule set and the processing of said request, a second route by which to fulfill said request (column 7, line 66 through column 8, line 52); and routing said request through said second route (column 8, lines 53-62).

- <Claims 10 and 19>

A method according to claim 2, wherein said request is routed to different types of content than originally requested (column 6, lines 42-45).

Since all the limitations of the invention as set forth in claims 2, 10, 11, and 19 were disclosed by Gifford, claims 2, 10, 11, and 19 are rejected.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 3, 4, 9, 12, 13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gifford, as applied above, in view of Porras et al. (U.S. Patent Number 6,484,203), hereinafter referred to as Porras.

13. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gifford, as applied above, in view of Mangipudi et al. (U.S. Patent Number 6,728,748), hereinafter referred to as Mangipudi.

14. Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gifford, as applied above, in view of Pulsipher et al. (U.S. Patent Number 5,948,055), hereinafter referred to as Pulsipher.

15. Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gifford, as applied above, in view of Grove et al. (U.S. Patent Number 6,820,133), hereinafter referred to as Grove.

16. Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gifford, as applied above, in view of Rhoads (U.S. Patent Number 6,311,214).

17. Concerning claims 3-9 and 12-18, Gifford did not explicitly state a specific rule set as defined in the claims. Gifford does state processing requests by a network performance metric, however, he is not specific about the details of this metric and thus has not explicitly stated a peak throughput rule set, cost-of-service rule set, etc. Although Gifford is not specific in this regard, the claimed limitations are often used in the art in network monitoring systems that track network performance. The specific claimed rule sets are thereby evidenced by various prior art

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systems (namely Porras, Mangipudi, Pulsipher, Grove, and Rhoads) which monitor network performance based on throughput, cost of service, etc. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Gifford by adding the ability to utilize a peak throughput determination rule set, a time-of-day rule set, or a health-of-system rule set as provided by Porras. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Gifford by adding the ability to utilize a type-of-content rule set as provided by Mangipudi. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Gifford by adding the ability to utilize a cost-of-service rule set as provided by Pulsipher. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Gifford by adding the ability to utilize a geographic rule set as provided by Grove. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Gifford by adding the ability to utilize a demographic rule set as provided by Rhoads. Here the combinations satisfy the need for a network server replication system that can automatically direct a client to a particular server replica. See Gifford, column 1, lines 33-41.

18. Thereby, the various combinations (as stated in sections 12-16 above) disclose:

- <Claims 3 and 12>

A method according to claim 2, wherein said at least one rule set comprises a peak throughput determination rule set (Porras, column 5, lines 23-45).

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- <Claims 4 and 13>

A method according to claim 2, wherein said at least one rule set comprises a time-of-day rule set (Porras, column 5, lines 23-45).

- <Claims 5 and 14>

A method according to claim 2, wherein said at least one rule set comprises a type-of-content rule set (Mangipudi, column 4, line 66 through column 5, line 15).

- <Claims 6 and 15>

A method according to claim 2, wherein said at least one rule set comprises a cost-of-service rule set (Pulsipher, column 2, lines 65-67).

- <Claims 7 and 16>

A method according to claim 2, wherein said at least one rule set comprises a geographic rule set (Grove, column 23, lines 24-54).

- <Claims 8 and 17>

A method according to claim 2, wherein said at least one rule set comprises a demographic rule set (Rhoads, column 9, lines 39-48).

- <Claims 9 and 18>

A method according to claim 2, wherein said at least one rule set comprises a health-of-system rule set (Porras, column 5, lines 23-45).

Since the combinations of Gifford and Porras, Gifford and Mangipudi, Gifford and Pulsipher, Gifford and Grove, and Gifford and Rhoads disclose the above limitations, claims 3-9 and 12-18 are rejected.

Conclusion

19. The applicant's amendment necessitated the new grounds of rejection presented in this office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). The applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

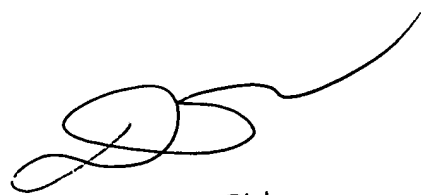
20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Lesniewski whose telephone number is 571-272-3987. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor Lesniewski
Patent Examiner
Group Art Unit 2152



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